

State Board of Equalization

OPERATIONS MEMO For Public Release

No : 1093
Date : March 29, 2001

SUBJECT: Offer in Compromise Procedures

I. PURPOSE

The purpose of this operations memo is to clarify Offer in Compromise (OIC) procedures. This operations memo contains information that supersedes the Compliance Policy and Procedures Manual (CPPM) Section 772.000, et seq., and the Compliance Policy and Management Guidelines (CPMG) Section 180.000, et seq.

II. BACKGROUND

In March 2000, the Board adopted revised procedures that required all OICs to be forwarded to the newly formed OIC Section for review.

The OIC Section will centralize offers from both the Sales and Use Tax Department (SUTD), and the Special Taxes Department (STD). Discussions have been initiated with the Property Taxes Department to also consider offers for the Timber and Private Railroad Car Tax programs. Centralizing the function will allow for uniform review of all OICs submitted. A centralization of the program will provide the state and the taxpayers many benefits, including a greater consistency in the administration of the program, improved communication and responsiveness, and expanded criteria with which to resolve the tax liability.

III. GENERAL

The OIC program is for taxpayers/feepayers (hereinafter called taxpayers) that do not have and will not have in the foreseeable future, the income, assets, or means to pay their tax liability in full. The OIC Section will not entertain offers on active accounts, non-final liabilities, or disputed tax liabilities. The OIC program allows taxpayers to settle their tax liability for less than the amount owing when the amount cannot be paid in full within a reasonable period of time, generally 5 to 7 years. This type of offer may be a good business decision for the Board when it represents more than we can reasonably expect to collect.

The Board does not have the authority to accept offers. The Board must utilize the legal system to accept an amount less than payment in full. OIC staff, with the assistance of the Legal Division (for offers less than \$5000) or the Attorney General (for offers of \$5000 or more), must obtain and record with the Superior Court a stipulated judgment for any amount less than what is owed.

All offers must be submitted to the responsible district on the Board's Offer in Compromise Application, Form BOE-490, or BOE-490-C, and forwarded to the OIC Section for evaluation. Although the OIC Section will accept applications sent directly to headquarters, taxpayers should

not be advised to submit them in this manner. Under no circumstances will the taxpayer be advised to contact the office of the Attorney General directly to work out a compromise.

IV. OFFER IN COMPROMISE APPLICATIONS: FORM BOE-490 AND FORM BOE-490-C

If the taxpayer is interested in filing an OIC, an application should be provided to the taxpayer for completion. The application may also be downloaded via the Internet at <http://www.boe.ca.gov/pdf/boe490.pdf>.

If the taxpayer is a corporation, the BOE-490-C form should be provided. The corporate OIC application is in the clearance process and should be available for use shortly. Upon clearance, the corporate application will be available via the Internet at <http://www.boe.ca.gov/pdf/490C.pdf>.

The taxpayer is required to complete the application and include supporting documentation to enable the OIC Section to evaluate the merits of the offer. The taxpayer should mail the completed application to the local office that administers the account.

The district office is given **30 days** to request any additional information required (as outlined on page 2 of the BOE-490) and prepare the district office summary to forward to the OIC Section. The district office should strive to gather all the supporting documentation necessary for the OIC to be evaluated. OIC applications should be forwarded to the OIC Section within **30 days** after the offer is received in the district whether or not the package is complete.

The taxpayer will need to continue making periodic payments as agreed upon in any existing installment payment arrangement or any existing Earnings Withholding Order (EWO) payments while the OIC Section is reviewing the offer. The OIC Section will monitor the payments and inform the taxpayer when he/she can terminate the agreement if appropriate. In most cases, if there is no existing installment payment arrangement or EWO, the OIC Section will direct the district office to suspend collection activity.

Some OICs may involve a partnership. If only one partner has requested an OIC, the district office should suspend summary collection action for the partner who has requested the OIC. The name of the requesting partner should be removed from all summary collections.

However, if delaying collection activity jeopardizes the Board's ability to collect the tax, the district may proceed with collection efforts after discussing it with the OIC Section.

V. INFORMATION TO INCLUDE IN THE DISTRICT SUMMARY

The district office is required to forward all offers and is not authorized to reject an offer based on its review. Referral of an OIC to the Headquarters' Offers in Compromise Section **should** include:

1. The completed Form BOE-490 or BOE-490-C, which must indicate an offered amount and the taxpayer's signature.

2. Documentation supporting the offer, which is outlined on the second page of the Form BOE-490 or BOE-490-C.

3. A memo summarizing the account status for each of the following points below (please indicate “not applicable” or “not available” if the points do not apply)

(a) How was the liability assessed? If the liability resulted from a tax determination, what were the audit findings based upon? Was a fraud penalty involved?

(b) How old is the liability, and what collection actions have been taken? Has the account been written-off? Does the taxpayer have a related active business, or is the taxpayer involved in a similar business? Please include a detailed history of the collection actions taken and the result of the actions. For instance, if a levy was sent, did the Board receive a payment? If so, how much?

(c) What is the source of the funds offered in compromise? Is the taxpayer taking a loan, borrowing from a family member, etc.?

(d) What is the present financial condition of the taxpayer and the possibility of his or her financial condition improving in the future? For example, future employment opportunities, inheritance, judgements, etc. If the taxpayer is currently on an installment payment arrangement, what is the payment amount and what is the due date? If there is an Earnings Withholding Order in place, what is the amount the Board is receiving from the employer, and how often? Does the taxpayer have any beneficial use of property in California?

(e) Is the taxpayer located in or out of the state? If the taxpayer is located out of the state, is the Board receiving voluntary payments? If so, how much and what is the due date of the payment?

(f) What is the taxpayer’s age, physical condition, and earning ability?

(g) If the offer is from a corporation, has Revenue and Taxation Code Section 6829, dual determination, been explored? Is there a possibility of a corporate suspension dual determination? Are there any personal guarantees?

(h) Did the taxpayer file bankruptcy? If so, what was the result of out claim? Did the taxpayer receive a discharge? Please include the chapter filed; petition date, case number, discharge or dismissal date, and the date of closing. In cases where there are multiple bankruptcy petitions, please provide information for each petition.

VI. PROCESSING OF OFFER IN COMPROMISE APPLICATIONS BY THE OIC SECTION

The OIC Section will send a written acknowledgement of all Offers in Compromise Applications to the taxpayer within 12 working days of receipt in the OIC Section. The district of control will receive a copy of the acknowledgement letter and other correspondence that will indicate the status of an offer. The OIC Section will assume control of the account in the Automated Compliance Management System (ACMS) while the offer is under consideration, unless there are partners not involved in the offer. If the account has been transferred to the OIC Section through ACMS, the district should have submitted adequate documentation of the due date of payments. If a payment is delinquent, the account may be referred back to the district of control if collection action is warranted. The average processing time for an offer is expected to be 90 days from receipt of the completed OIC package in the OIC Section until a recommendation is made.

VII. SECURING THE OFFERED AMOUNT

The taxpayer is not required to submit a deposit of the offered amount at the time the application is submitted. The OIC Section will notify the taxpayer when the funds should be submitted. However, if funds are received with the application, they should be processed as an "OIC deposit." The deposit of the offered amount shall be available for refund if the offer is denied. The districts will continue to accept, apply, and refund "OIC deposits." In many instances, funds for the offered amount are provided by relatives or friends not associated with the business entity. These deposits should be processed as third-party deposits.

VIII. PROCESSING ACCEPTED OFFERS

All funds must be received prior to forwarding a recommendation for acceptance for management approval. Recommendations to accept offers will be forwarded to the Chief, Taxpayers' Rights and Equal Employment Opportunity Division, and then to the Legal Division for review. All recommended offers are forwarded to the Attorney General's office for final approval.

Liens can not be released until a court judgment and satisfaction is filed with the court.

Court filing fees are required with the offered amount. If an offer is less than \$5,000.00, each taxpayer to be named in the action will need to submit \$93.00 (single offer \$93.00, joint offer \$186.00). The \$93.00 court-filing fee (subject to change) should be posted separately as an "OIC deposit" to be later applied as "costs of collection."

For offers of \$5,000.00 or more, the Attorney General's office will request the court filing fees from the taxpayer.

Currently, IRIS does not have the capability to identify differences to a specific client. For example, if an offer is accepted from a partner, there is no way to indicate that the partner whose offer was accepted is no longer liable for the balance. The OIC Section will make a comment on

Taxable Activity Registration (TAR) System and ACMS to indicate when a partner's offer has been accepted. The district should make adjustments when taking collection action by removing the relieved taxpayer's name from FTB offsets, lien requests, levies, warrants, and any other collection remedies that would adversely affect the relieved partner.

Districts and taxpayers should be aware that billing notices will continue to be automatically generated through IRIS and sent to all partners regardless of the accepted offer.

IX. PROCESSING DENIED OFFERS

If the offer is rejected, denied, or withdrawn, any deposit that may have been posted may be applied to the liability **at the written request of the taxpayer**. The effective date will be the date the funds were received. If a third party has posted the deposit, the OIC staff must get written permission from the third party to apply the deposit. No interest will be granted on returned deposits. The case will be returned to the district with a recommendation for case handling based on information analyzed during the offer process. The responsibility will be transferred back to the district of control. When the OIC Section makes a recommendation to the district for account resolution, the district should keep in mind that the OIC Section has received the most recent information pertaining to the taxpayers financial status. Typically, the recommendation may be a payment arrangement. OIC staff negotiates the arrangement and the district finalizes it with the BOE-407 document. The taxpayer is notified by the OIC Section that the district may reevaluate the payment arrangement in six months.

There is no formal appeal process for offers in compromise. However, the taxpayer may informally appeal a denied offer in compromise with the OIC Section Supervisor and the Taxpayers' Rights Advocates Office.

I. OBSOLESCENCE

This operations memo will become obsolete when the information contained herein is incorporated into the appropriate manuals.

Jennifer L. Willis, Chief
Taxpayers' Rights and Equal
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Distribution: 1D